

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK JOSEPH KISH,

Defendant-Appellant.

UNPUBLISHED

January 25, 2005

No. 250508

St Clair Circuit Court

LC No. 02-001990-FH

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for OUIL, third offense, MCL 257.625(1), and driving with a suspended license, MCL 257.904(3)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

During cross-examination of a defense witness, the prosecutor began to ask her about the condition of her truck when she was arrested for drunk driving. Defense counsel objected, and the court instructed the jury to ignore the question. The court denied defendant's motion for a mistrial, finding that defendant was not prejudiced where the witness was not a party, she did not answer the question, and the jury was instructed to disregard the question.

This Court will review a trial court's decision to deny a mistrial for abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial. *Id.*

There is no showing that defendant was prejudiced by the prosecutor's unanswered question. Even though admission of evidence of a witness' prior arrest without conviction violates the holding of *People v Falkner*, 389 Mich 682, 695; 209 NW2d 193 (1973), the rule does not constitute an absolute prohibition. *People v Layher*, 464 Mich 756, 768; 631 NW2d 281 (2001). Where the witness did not answer the question, and the jury was directed to totally ignore it and to decide the case on the evidence presented, there is no showing that defendant's rights were prejudiced or that his ability to get a fair trial was impaired. The court did not abuse its discretion in denying a mistrial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello